

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

January 11, 2013

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: AUTHORIZATION FOR THE CHAIRPERSON TO NEGOTIATE AND SIGN A MEMORANDUM OF AGREEMENT (MOA) WITH THE STATE OF HAWAI'I, DEPARTMENT OF DEFENSE (DOD), FOR ACCESS, CONSERVATION MANAGEMENT, AND MAINTENANCE OBLIGATIONS FOR FORMER KULANI CORRECTIONAL FACILITY LANDS, WAIAKEA, SOUTH HILO, TMK: (3) 2-4-08:09 POR.

AND

REQUEST APPROVAL OF DECLARATION OF EXEMPTION TO CHAPTER 343, HRS ENVIRONMENTAL COMPLIANCE REQUIREMENTS FOR THE SUBJECT MOA.

This submittal requests the Board to authorize the Chairperson to negotiate and sign a MOA (Exhibit A) between the Board of Land and Natural Resources (BLNR) and the State Department of Defense for a portion of the former Kūlani Correctional Facility lands currently being used by the Department of Defense (DOD) Youth Challenge Academy under a revocable permit and the Division of Forestry and Wildlife (DOFAW) under a right of entry, pursuant to the terms in Exhibit A and subject to approval by the Attorney General. Additionally, DOFAW requests approval of a declaration of exemption to Chapter 343, HRS requirements for this MOA.

BACKGROUND:

The former Kūlani Correctional Facility lands (Tax Map Key: (3) 2-4-08:09 por.) contains high quality native forest and endangered species, and has been managed by DLNR and partners on a landscape scale since 1994 to protect natural resources through the Three Mountain Alliance (TMA). A portion of this parcel containing an area of 6,623.81 acres was set aside through Executive Order 4338 as an extension of the Pu'u Maka'ala Natural Area Reserve.

The BLNR on October 28, 2011 (item D-15), approved the issuance of a revocable permit for approximately 279.76 acres of the former Kūlani Correctional Facility lands to DOD, for its Youth ChallenNGe Academy, which provides opportunities for at-risk, non-traditional students to learn life skills to become productive, responsible and successful citizens, while working towards their high school diplomas. The BLNR approved reservations to DOFAW of access, utility and conservation easements over the DOD revocable permit area as well as the issuance of a right-of-entry to DOFAW for 342.24 acres of another portion of the subject parcel for data collection, survey and conservation purposes.

DLNR and its consultants, contractors and/or persons acting on its behalf, including the TMA, require access over internal roads of the DOD revocable permit area as well as access for conservation management over open and accessible areas within the permit area. In addition, public access to Pu‘u Maka‘ala NAR is allowed for recreational and cultural uses Hawaii Administrative Rules (HAR) §13-209-3.

The BLNR approved item D-15 requires DOD and DLNR to reach an agreement between them regarding access by DLNR over the internal roads of the DOD revocable permit area, conservation management over open and accessible areas within the permit area, the parties' maintenance obligations for the internal roads, conditions under which public access will be permitted, etc.

Kūlani Correctional Facility has been proposed for reactivation by the Department of Public Safety as a Correctional Facility with proposed occupation of the site as soon as possible but by 2014 at the latest. It is anticipated that DOD will remain at the subject property until they find an alternative site for the Youth ChallenNGe Academy.

DISCUSSION:

DLNR and DOD have prepared a draft MOA (Exhibit A), which has been preliminarily reviewed by the Attorney General. This MOA will allow DLNR and DOD to enter into a mutually beneficial agreement to preserve the natural resources of the subject area for environmental and public benefit and to provide conservation education, service-learning opportunities and vocational training for youth at the Youth Challenge Academy. The MOA addresses the requirements of the BLNR to reach agreement regarding access by DOFAW over the internal roads of the DOD revocable permit area, conservation management over open and accessible areas within the permit area, the parties' maintenance obligations for the internal roads, conditions under which public access will be permitted, etc.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The MOA is a mutually beneficial agreement between DLNR and DOD for access procedures, routine conservation management actions and operations and maintenance of the facilities.

These are activities which are exempt from the requirements for the preparation of an environmental assessment in accordance with the requirements of Chapter 343, HRS, and Chapter 11-200-8, Hawaii Administrative Rules (HAR), under the following exemptions:

Exemption Class #1: Operations, repairs or maintenance of existing structures, facilities, equipments or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

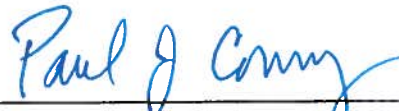
Exemption Class 5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.

RECOMMENDATIONS:

That the Board:

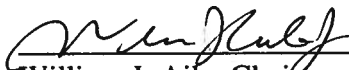
1. Authorize the Chairperson to negotiate and sign a MOA between the BLNR and the DOD for a portion of the former Kūlani Correctional Facility lands currently being used by the DOD Youth Challenge Academy under a revocable permit and DOFAW under a right of entry, pursuant to the terms in Exhibit A and subject to approval by the Attorney General.
2. Approve a declaration of exemption to Chapter 343, HRS requirements for this MOA.

Respectfully submitted,



PAUL J. CONRY, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



William J. Aila, Chairperson
Board of Land and Natural Resources

Exhibit A: Draft MOA

MEMORANDUM OF AGREEMENT

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

AND

DEPARTMENT OF DEFENSE
YOUTH CHALLENGE ACADEMY

For Waiākea, South Hilo, Tax Map Key: (3) 2-4-08:09 por.

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into this _____ day of 2012, by and between the State of Hawai'i, Department of Land and Natural Resources, Division of Forestry and Wildlife ("DLNR"), by its Board of Land and Natural Resources ("BLNR"), and the State of Hawai'i, Department of Defense ("DOD") for its Youth Challenge Academy, by its Adjutant General. DLNR and DOD are jointly referred to as the "Parties."

WITNESSETH:

WHEREAS, the former Kūlani Correctional Facility lands (Tax Map Key: (3) 2-4-08:09 por.) ("subject parcel") contain high quality native forest and endangered species, and have been managed by DLNR and partners on a landscape scale since 1994 to protect natural resources through the Three Mountain Alliance ("TMA") watershed partnership;

WHEREAS, the Governor of the State of Hawai'i through Executive Order 4338 set aside a portion of the subject parcel as an extension of the Pu'u Maka'ala Natural Area Reserve ("NAR") to the DLNR containing an area of 6,623.81 acres, which is more fully set forth in Attachment 1;

WHEREAS, the BLNR on October 28, 2011, approved item D-15, which is identified as Attachment 2, issuing a revocable permit for approximately 279.76 acres of the subject parcel to DOD, for Youth Challenge Academy ("YCA") purposes to provide opportunities for at-risk, non-traditional students to learn life skills to become productive, responsible and successful citizens, while working towards their high school diploma;

WHEREAS, the BLNR approved item D-15 included reservations to DLNR of access, utility and conservation easements over the DOD revocable permit area as well as the issuance of a right-of-entry to DLNR for 342.24 acres of the subject parcel for data collection, survey and conservation purposes while DLNR processes its formal request to include such acreage in the Pu'u Maka'ala NAR (Attachment 2);

WHEREAS, DLNR and its consultants, contractors and/or persons acting on its behalf, including the TMA, require access over internal roads of the DOD revocable permit area

Exhibit A

as well as access for conservation management over open and accessible areas within the permit area;

WHEREAS, public access to Pu'u Maka'ala NAR is allowed for recreational and cultural uses, as described in Attachment 6 (Hawaii Administrative Rules ("HAR") §13-209-3);

WHEREAS, the BLNR approved item D-15 requires Applicants DOD and DLNR to reach an agreement between them regarding access by DLNR over the internal roads of the DOD revocable permit area, conservation management over open and accessible areas within the permit area, the parties' maintenance obligations for the internal roads, conditions under which public access will be permitted, etc.;

WHEREAS the DOD and DLNR have the common interest to preserve the natural resources of the subject areas for environmental and public benefit and to provide conservation education, service-learning opportunities and vocational training for youth at the YCA; and

WHEREAS, DLNR and DOD wish to enter into a mutually beneficial agreement to accomplish these purposes;

NOW THEREFORE, in consideration of the mutual benefits that will accrue to DLNR and DOD, the parties agree as follows:

A. Maintenance Obligations:

DOD Agrees:

1. DOD will be responsible for maintenance and obligations related to the use and occupancy of the land, including the internal roads, within the DOD revocable permit area (Attachment 3).

DLNR Agrees:

2. DLNR will be responsible for maintenance and obligations related to the use and occupancy of Tax Map Key: (3) 2-4-08:09 por. within the NAR (Attachment 1) and within the DLNR right-of-entry area (Attachment 4).
3. DLNR will provide limited assistance to DOD with the maintenance of the easement over the internal roads in the DOD revocable permit area (Attachment 3). Such assistance may include clearing fallen trees from the internal roads, maintenance of gates/fences, removing invasive vegetation from along the internal roads and performing rare species surveys prior to roadwork.

B. DLNR and DOD Access

DOD Agrees:

1. DOD will allow DLNR to install DLNR locks to the main gates to the DOD revocable permit area, including the main front access gate to the YCA facility in

Exhibit A

order for DLNR to access DLNR's easement for access and conservation purposes and/or in case of emergency. DLNR will place DLNR locks on all gates in the internal roads in the easement corridor that it requires for access and conservation purposes. The easement for DLNR, its contractors, consultants, and/or persons acting for or on its behalf is valid 24 hours a day for any duration and does not require that prior notice be provided.

DLNR Agrees:

2. DLNR will provide keys to DOD to all DLNR locks, for DOD access to the NAR set aside and other areas in case of emergency.
3. DLNR, its consultants, contractors and/or persons acting on its behalf will notify DOD when entering or exiting through main gates in the DOD revocable permit area.

C. Public Access

DOD Agrees:

1. DOD will allow DLNR to establish and maintain a trailhead along Stainback Highway outside the YCA main gate in the DOD revocable permit area to enhance public access to the NAR. Pedestrians using this trailhead will not require permission or approval from DOD to park and use the two trails that enter directly into the NAR (Attachment 5).
2. DOD will permit public pedestrian access to the NAR through the DLNR easement for the internal roads of the DOD revocable permit area on a case by case basis, upon request. Due to DOD concerns about safety of students in YCA programs and security of YCA facilities, public pedestrian access through the front gate or internal roads of the YCA revocable permit area requires prior written request and approval from DOD and DLNR. Approval shall be requested from the principal contacts listed in Section J.
3. DOD will allow pedestrian and/or vehicular access through the YCA main gate and easement for the internal roads of the DOD revocable permit area to people with approved DLNR NAR Special Use Permits. DLNR NAR Special Use Permit issuance is guided by HAR §13-209- 5 and typically includes activities such as hiking or nature study with groups larger than ten, research, scientific collecting, gathering (including Native Hawaiian religious and customary gathering rights). Permittees using the YCA main gate and internal roads of the DOD revocable permit area will be required to notify DOD 24 hours prior to requested access, check in at the YCA front gate and show their approved Special Use Permit.

DLNR Agrees:

4. DLNR will establish, maintain, and repair the trailhead in the DOD set-aside area along Stainback Highway to provide public access for two recommended trails

into the NAR (Attachment 5). DLNR will install informational signage at the trailhead explaining the hazards, permitted pedestrian uses and prohibited activities in the NAR.

5. DLNR will improve public pedestrian access to the Kulani section of the NAR by improving and maintaining trails and recommended access routes in the NAR.
6. DLNR will add boundary, trail and easement signage at the NAR boundary and along the easement for the internal roads of the DOD revocable permit area to reduce incidences of public trespass into the DOD revocable permit area.
7. DLNR will provide DOD with NAR information to distribute to public pedestrians who have received approval from DOD to access the NAR from the front gate or internal roads of the YCA revocable permit area. This information will include a map showing the designated pedestrian access routes to the NAR along main internal roads of easement corridor, permitted pedestrian uses and prohibited activities.
8. DLNR will notify DOD when issuing Special Use Permits for the NAR that require access through the YCA main gate and/or the internal roads of the DOD revocable permit area. Special Use Permits will require permit holders to comply with the terms and conditions in the DLNR Right of Entry (Attachment 4) when using the easement over the internal roads of the DOD revocable permit area. Conditions will be added into the DLNR NAR Special Use Permits that inform permittees of the DOD front gate/easement requirements.
9. DLNR will provide prior notification to DOD when bringing organized groups through the YCA main gate and/or the internal roads of the DOD revocable permit area. DLNR staff will provide periodic guided educational tours of the Kūlani portion of the NAR and/or volunteer service trips for community groups and/or the general public.

DLNR and DOD jointly agree:

10. Vehicular access through the DLNR access easement for NAR visitation purposes for parties unaffiliated with DLNR staff and its consultants, contractors and/or persons acting for or on its behalf will require written permission on a case-by-case basis, granted by mutual agreement of the DOD and DLNR. Requests of this nature shall be granted from the principal contacts in Section J.
11. Vehicular access along roads within the NAR (Attachment 1) are designated only for management vehicular use by DLNR staff and its consultants, contractors and/or persons acting for or on its behalf. Vehicular access for the DOD, other parties or the public from the easement into the NAR requires written approval via a Special Use Permit issued by DLNR or its authorized representative pursuant to HAR §13-209-5. Special Use Permits shall be

requested from the DLNR Chairperson or authorized representative (contact information in Section J).

D. Utility Easement Access

DLNR and DOD jointly agree:

1. Vehicular access through the DOD main gate and the DLNR access easement for utility easement access purposes (e.g. Hawaii Electric Light Company, leasees and sub-leasees requiring access to the top of Kūlani Cone, etc) for parties unaffiliated with DLNR staff and its consultants, contractors and/or persons acting for or on its behalf will require written permission on a case-by-case basis, granted by mutual agreement of the DOD and DLNR. Formal easements for this type of access are being developed, but interim procedures will include the same requirements as public vehicular access (See Section C-10).

E. Conservation Management and Other Cooperative Activities

DOD Agrees:

1. DOD will cooperate with and provide DLNR access for conservation management over open and accessible areas within the DOD revocable permit area. Conservation management includes but is not limited to fence inspection and maintenance, invasive species control using approved control methods (chemical, mechanical and biological) and native species protection such as protective barriers, predator control, seed collection and endangered species monitoring, greenhouse work, native plant propagation and research. If such activities conflict with YCA activities, DOD will work with DLNR to determine alternative dates/times for conservation management.
2. DOD recognizes the sensitive natural environment of the DOD revocable permit area as well as the surrounding NAR. DOD will not bring domestic animals (cats, dogs, etc.) into the area, feed feral (e.g. cats, pigs, etc.) or native animals (e.g. nēnē), plant invasive species as landscaping, etc. Trash should be contained so as to not attract feral animals, and vehicles should be cleaned so as to not import weeds, ants, coqui frogs, etc. into the general area.
3. DOD will notify DLNR if feral animals (dogs, pigs, cats, etc.) or other pests (e.g. coqui frogs, ants, wasps, etc.) are spotted in the area or if they notice damage to any fences or gates.

DLNR Agrees:

4. DLNR will provide prior notification to DOD when planning on doing conservation management in open and accessible areas within the DOD revocable permit area. If planned activities conflict with YCA activities, DLNR will work with DOD to determine alternative dates/times for conservation management.

5. DLNR will assist DOD with conservation management in the DOD revocable permit area including removal of feral animals, coqui frogs, management of endangered species such as nēnē, removal of invasive weeds, planting of native plants as landscaping and other similar management.

DOD and DLNR Jointly Agree:

6. DOD and DLNR will work cooperatively to establish joint programs that provide educational, vocational training and service learning opportunities for YCA staff and students as well as conservation benefits to the subject area.

F. General

DOD and DLNR Jointly Agree:

1. DLNR and DOD, their consultants, contractors, and/or persons acting for or on their behalf shall comply with all laws, statutes ordinances, rules and regulations of the Federal, State and County of Hawaii governments affecting the subject area.

G. Liability:

1. Liability relating to claims or incidents within the internal roads of the DOD revocable permit area, including responsibility for responses, processing and/or potential expenses shall be addressed as follows:
 - a. DLNR shall address items involving: DLNR vehicles, equipment or personnel; other vehicles, equipment or personnel associated with entities conducting activities on behalf of or under approval from DLNR; vehicles, equipment or personnel representing the general public who are accessing DLNR-managed lands.
 - b. DOD shall address items involving: DOD vehicles, equipment or personnel; other vehicles, equipment or personnel associated with entities conducting activities on behalf of or under approval from DOD; vehicles, equipment or personnel representing the general public who are accessing the DOD revocable permit area.
 - c. DLNR and DOD shall jointly and equally address items involving the general public whose activities within the easement for the internal roads of the DOD revocable permit area are not directly related to DLNR or DOD operations.
2. Nothing in this MOA shall be construed as an indemnification of one Party or another for liabilities of a Party or third persons for property loss or damage or death or personal injury arising out of and during performance of this MOA. DOD is responsible for any and all claims, suits, and demands arising out of or resulting from the acts or omissions of DOD's employees, officers, agents, and others under their supervision. DLNR is responsible for any and all claims, suits, and demands

Exhibit A

arising out of or resulting from the acts or omissions of DLNR's employees, officers, agents, and others under their supervision. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of the MOA.

H. Disputes. Any disputes that cannot be resolved between the identified primary points of contact for the Army and the Board relating to the terms of this MOA will be brought to the attention of Chairperson of the BLNR for a determination or resolution of the dispute or question.

I. Term, Modification, Termination and Notice:

1. *Term.* This instrument is executed as of the last date show below which shall be the commencement date. This instrument will remain in effect for the duration of the revocable permit after which it is renewable at the option of the Parties.
2. *Modification.* This MOA may be modified at any time by mutual agreement of the Parties. Modifications shall be in writing executed by the authorized officer representing the DOD and the BLNR respectively. For purposes of this modification provision, such authorized officers are the Adjutant General, and the Chairperson of the BLNR.

3. *Termination.*

Either party, in writing, may terminate this instrument in whole, or in part, at any time before the date of expiration. Unless otherwise by mutual agreement, thirty (30) days advance notice shall be provided prior to termination.

This instrument is terminated if the set-aside and/or revocable permit for either Party, are disapproved, withdrawn, or cancelled, or if either Party abandons its use of the subject area or commitments for a continuous period of one (1) year.

4. *Notice.*

Any written notice required to be given by either Party shall be delivered personally or by United States certified mail, postage prepaid to principal contacts listed below. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier.

J. Principal Contacts

- a. DLNR: BLNR Chairperson or authorized representative, Department of Land and Natural Resources, Post Office Box 621, Honolulu, Hawaii 96809.
- b. DOD: Adjutant General or authorized representative, Department of Defense, 3949 Diamond Head Road, Honolulu, Hawaii 96816.

K. Attachments. The attachments to this agreement referenced above and described as follows are incorporated herein:

- Attachment 1. Executive Order 4338
- Attachment 2. BLNR Agenda item D15
- Attachment 3. Revocable Permit to DOD
- Attachment 4. Right of Entry to Division of Forestry and Wildlife,
Waiākea, South Hilo, Hawai‘i, Tax Map Key (3) 2-4-08:09
- Attachment 5. DOD Public Parking and DLNR Trails
- Attachment 6. Rules Regulating Activities within Natural Area Reserves

IN WITNESS WHEREOF, DLNR and DOD have executed this MOA as of the last date written below.

DEPARTMENT OF DEFENSE

By: Adjutant General

Date

APPROVED AS TO FORM:

Deputy Attorney General

Date

DEPARTMENT OF LAND AND NATURAL RESOURCES

By: William J. Aila, Jr.
Chairperson

Date

APPROVED AS TO FORM:

Deputy Attorney General

Date

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 28, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 11HD-113

Hawaii

Cancellation of Governor's Executive Order No. 4341 and Issuance of Revocable Permit for Approximately 279.76 Acres to State of Hawaii, Department of Defense (DOD), for Youth Challenge Academy Purposes, with Access, Utility and Conservation Easements Reserved to the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW); Issuance of Immediate Management Right-of-Entry to DOD; Issuance of Right-of-Entry to DOFAW over Access, Utility and Conservation Easement Area, and over Approximately 342.24 Acres for Data Collection, Surveys and Conservation Activities, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-08:09 pors.

CONTROLLING AGENCY:

State of Hawaii, Department of Defense

APPLICANTS:

State of Hawaii, Department of Defense (DOD), and the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW)

LEGAL REFERENCE:

Sections 171-11, -13, -55 and -95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-4-08:09, as shown on the attached maps labeled Exhibits A, B and C.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

October 28, 2011

bb

AREA:

Area covered by Executive Order No. 4341 =	622.00 acres, more or less
Area requested for Revocable Permit to DOD =	279.76 acres, more or less
Area of right-of-entry to DOFAW =	342.24 acres, more or less

ZONING:

State Land Use District:	Conservation
County of Hawaii CZO:	Unplanned

TRUST LAND STATUS:

Section 5(b) of the Hawaii Admission Act
DHHL 30% entitlement land pursuant to the Hawaii State Constitution: NO

CURRENT USE:

DOD uses the subject land for its Youth Challenge Academy

CHARACTER OF USE:

DOD will continue to use approximately 279.76 acres of the site for Youth Challenge Academy purposes until it is able to find a new location for its program. Access, utility and conservation easements will be reserved over the subject land to DOFAW. A right-of-entry will be issued to DOFAW for the balance of approximately 342.24 acres for data collection, survey and conservation purposes while DOFAW processes its request to include such acreage in the Puu Makaala Natural Area Reserve.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached as Exhibit D.

The subject lands are within the Conservation District, General, Resource and Protected Subzones. Applicants will be responsible for complying with any Conservation District permit requirements applicable to their projects.

APPLICANT REQUIREMENTS:

- 1) Applicants DOD and DOFAW shall be required to process and obtain subdivision at applicants' own cost, if required;
- 2) Applicants DOD and DOFAW shall be required to provide survey maps and descriptions according to State DAGS standards and at applicants' own cost; and

- 3) Applicants DOD and DOFAW shall reach an agreement between themselves regarding access by DOFAW over the internal roads of the DOD revocable permit area, conservation management over open and accessible areas within the permit area, the parties' maintenance obligations for the internal roads, conditions under which public access will be permitted, etc. The form of agreement will need to be presented to the Board within three months.

REMARKS:

At its meeting of September 9, 2010, Item D-3, as amended, the Board of Land and Natural Resources approved the cancellation of the executive orders held by the Department of Public Safety (PSD) for the former Kulani Correctional Facility (KCF) on Mauna Loa's windward flank. The Board additionally approved the set-aside of approximately 600 acres of the KCF lands to the State of Hawaii, Department of Defense (DOD), for the operation of a Youth Challenge Academy (YCA).¹

Pursuant to the Board approval, Governor's Executive Order Nos. 4339 and 4340 were issued on November 4, 2010. These executive orders canceled Executive Order Nos. 1225 and 1588, respectively, which originally established KCF. Also on November 4, 2010, Executive Order No. 4341 was issued, which set aside approximately 622 acres to DOD for its YCA.

The Governor's authority to set aside lands to an agency by executive order is subject to the conditions set forth in Hawaii Revised Statutes, Section 171-11. That section provides in part as follows:

The power granted to the governor in this section to set aside or withdraw or withdraw and set aside public lands shall be exercised subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by the majority vote of both, in any regular or special session next following the date of the setting aside or withdrawal, or withdrawal and setting aside....

During the 2011 legislative session, the Senate unanimously adopted Senate Concurrent Resolution 14 (SCR 14) on April 5, 2011 disapproving the set-aside of the lands to DOD. See Exhibit E attached. SCR 14 requested DOD to find an alternate location for its YCA, and urged PSD to re-open a prison on the property. SCR 14 did not, however, disapprove Executive Order Nos. 4339 and 4340. Accordingly, the cancellations of the original executive orders for the facility stood, with the result that the 622 acres technically

¹ At the same meeting, the Board approved the set-aside of the approximately 6,600 remaining acres of KCF to DOFAW for the inclusion in the Puu Makaala Natural Area Reserve (NAR). September 9, 2010, Item C-1.

returned to the inventory of the Department of Land and Natural Resources as unencumbered land.²

As a practical matter, it will take some time for DOD to relocate its YCA program, and for PSD to evaluate whether it is feasible to reopen a prison at the former KCF site. The YCA program "provides opportunities for at-risk, non-traditional students to learn life skills to become productive, responsible and successful citizens, while working towards their high school diploma." DOD graduated its first class of cadets from the program in June 2011. DOD's best estimate at the present time is that it will need to remain on the land through 2012. In the interim, DOD's use and occupancy of the land needs to be formally documented. Staff is recommending that the Board approve a month-to-month revocable permit to DOD for the transition period. The revocable permit will allow DOD to continue its operations on the site and will additionally serve as a vehicle for addressing access and conservation issues between DOD and DOFAW.

DOD no longer requires use of the full 622 acres set aside to it under Executive Order No. 4341. When the DOD's proposed use of the land was before the Board at the September 9, 2010 meeting, DOD had requested permission to conduct military training on the land. The training was to occur primarily on a section of former pasture depicted in light shading on Exhibit C attached. The amended Board action specifically prohibited military training at Kulani, and staff is carrying over that prohibition into the recommendation on the revocable permit to DOD. One consequence on the military training prohibition was that DOD no longer had use for approximately 342.24 acres of former pasture. However, DOFAW intends to add the 342.24 acres to the Puu Makaala NAR and has commenced the process to accomplish this. Staff is recommending the issuance of a right-of-entry permit to DOFAW covering these 342.24 acres to conduct data collection, surveys and conservation activities until such time as it makes its formal request to the Board for inclusion of the area in the NAR.

Before its disapproval by SCR 14, Executive Order No. 4341 had reserved to DOFAW perpetual access and utility easements over the internal roads of the DOD set-aside area, and noted that the nature and extent of the easements were to be set forth in a separate memorandum of agreement (MOA) between DOD and DOFAW. This requirement was taken from the Board's approval of the set-aside on September 9, 2010.³ Access over the

² Some concerns have been raised about the validity of SCR 14 due to the procedures pursuant to which it was adopted. Regardless of its validity, DOD has indicated that the remoteness of the Kulani site makes the operation of the YCA there too expensive in the long term. DOD would be looking to relocate even if the Senate had not passed SCR 14. To avoid any uncertainty on the matter that might arise from the validity of SCR 14, staff is recommending the issuance of an executive order formally canceling Executive Order No. 4341.

³ Although DOD and DOFAW started work on an MOA consistent with the Board's directive, the Senate's disapproval of Executive Order No. 4341 made finalization of the MOA moot.

internal roads of the YCA area is important to DOFAW because DOFAW uses the roads to manage the Puu Makaala NAR. Accordingly, as with the prior Board action for the set-aside to DOD, staff is including an Applicant Requirement above that DOD and DOFAW return to the Board within three months for approval of an MOA regarding access over the internal roads of the revocable permit area.

DOFAW has indicated that in addition to easements for access and utilities, DOFAW needs to have an easement over the open and accessible areas of the land covered by the revocable permit to DOD to allow DOFAW personnel to take measures to assist endangered species and eradicate predators and invasive species. The former pastures at KCF are a habitat for the endangered *Nene*. In addition, the Kulani area has been selected as a future release site for captive-bred *Alala* (Hawaiian Crow). Accordingly, DOFAW is requesting that the scope of the easement be extended to all open and accessible areas under the revocable permit for conservation purposes. The extent and nature of the conservation easement are to be addressed in the MOA between DOFAW and DOD.

There is no County zoning applicable to the lands affected by the proposed uses. In light of the closure of KCF as a corrections facility in November 2009, staff knows of no alternative highest and best use of the subject land. The requested disposition fully utilizes the land.

Comments were solicited from the government agencies identified below with the results indicated.

Agency	Comment
DLNR / Office of Conservation and Coastal Lands (OCCL)	OCCL confirms the subject land is within the State Land Use Conservation District, Resource Subzone. Applicants will be responsible for Conservation District permit requirements applicable to their projects. DLNR recently approved new rules for Conservation Districts that may go into effect in the next few months. They are available on the DLNR website.
DLNR / Historic Preservation	No response.
DLNR / Water Resource Management (CWRM)	CWRM records shows that there is an existing well (Well No. 3117-01) located in an adjacent parcel at TMK: (3) 2-4-08:25 owned by the State. The well was drilled in 1947 for use at Kulani Prison. DOFAW may want to consider including this well as part of its data collection efforts to monitor aquifer water levels. However, if there is no planned future use for this well, it should be properly sealed to avoid potential contamination

Agency	Comment
	of the underlying aquifer or ground water wastage. A permit from CWRM should be obtained prior to any well sealing activities.
Department of Public Safety	See Exhibit F attached and discussion below.
Department of Agriculture	No objections.
Department of Health / Environmental Division (DOH)	No comments. However, DOH recommends review of its standard comments available on its website, and brings attention to its Healthy Community Design Smart Growth Checklist also available on line.
Office of Hawaiian Affairs	No response.
County of Hawaii Planning Department	No objections.
County of Hawaii Police Department	Does not anticipate any significant impact to traffic and/or public safety concerns.
County of Hawaii Fire Department	No comments.
County of Hawaii Department of Public Works	No response.
U.S. Fish & Wildlife Service	Supports the proposed action.
Three Mountain Alliance Watershed Partnership	No response.

PSD's comments (attached as Exhibit F) request that all 622 acres set aside to DOD under Executive Order No. 4341 be redesignated for PSD's use in the reestablishment of a correctional facility on the land. However, PSD is presently not ready to resume operations at site. The approval of an interim revocable permit to DOD for the continuation of its YCA program will not preclude PSD from requesting a set-aside of the main campus (approximately 279.76 acres) of the former KCF for a correctional facility.

Staff is maintaining its recommendation that a management right-of-entry be issued to DOFAW for the balance of the 622-acre site under Executive Order No. 4341 while DOFAW completes its procedures for requesting inclusion of the land in the Puu Makaala NAR. The pastures in this area have not been used since 2005 and are now recovering in native forest and are known habitat for endangered plants and animals. As mentioned above, this area is also a priority for the future release of the *Alala*. Finally, PSD continues to hold Executive Order No. 1426 for approximately 492.5 acres at the 800-foot elevation of Mauna Loa as an addition to KCF. This land was formerly used for pasture and could be put to productive use in conjunction with a reopened correctional facility at the 279.76-acre main campus site.

RECOMMENDATION: That the Board:

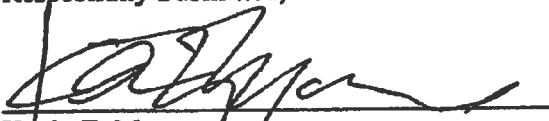
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment;
2. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 4341 and subject to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Subject to the Applicants fulfilling all of the Applicant requirements listed above, authorize the issuance of a revocable permit to the State of Hawaii, Department of Defense, covering the approximately 279.76 acres of the subject area for purposes of operating its Youth ChalleNGe Academy under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - B. The lands covered by the revocable permit shall only be used for Hawaii National Guard Youth ChalleNGe Academy purposes. Military uses, training or otherwise on the land, are explicitly prohibited;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Grant an immediate management right-of-entry to the State of Hawaii,

Department of Defense, its consultants, contractors and/or persons acting for or on its behalf, over approximately 279.76 acres of the subject land under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

- A. The standard terms and conditions of the most current right-of-entry form as may be amended from time to time;
 - B. The lands covered by the right-of-entry permit shall only be used for Hawaii National Guard Youth ChalleNGe Academy purposes. Military uses, training or otherwise on the land, are explicitly prohibited;
 - C. This management right-of-entry is effective upon the full execution of the right-of-entry permit and shall continue until the revocable permit document is issued; and
 - D. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.
5. Grant an immediate right-of-entry to the Department of Land and Natural Resources, Division of Forestry and Wildlife, its consultants, contractors and/or persons acting for or on its behalf, (i) over the internal roads on the area covered by the revocable permit to be issued to the Department of Defense, for access and utility purposes, as well as over the open and accessible areas under the revocable permit for data collection, survey, and conservation purposes, and (ii) over approximately 342.24 acres outside of the area covered by the revocable permit to be issued to the Department of Defense, to conduct data collection, surveys and conservation activities while DOFAW processes a formal request for inclusion of the area in the Puu Makaala Natural Area Reserve, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current right-of-entry form as may be amended from time to time;
 - B. This right-of-entry is effective upon the full execution of the right-of-entry permit and shall continue for one year. It may be renewed for additional periods of one-year or any shorter duration upon timely request to the Chairperson and at the Chairperson's discretion; and

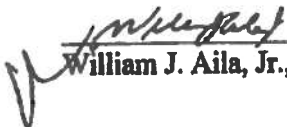
- C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



TMK (3) 2-4-08:09

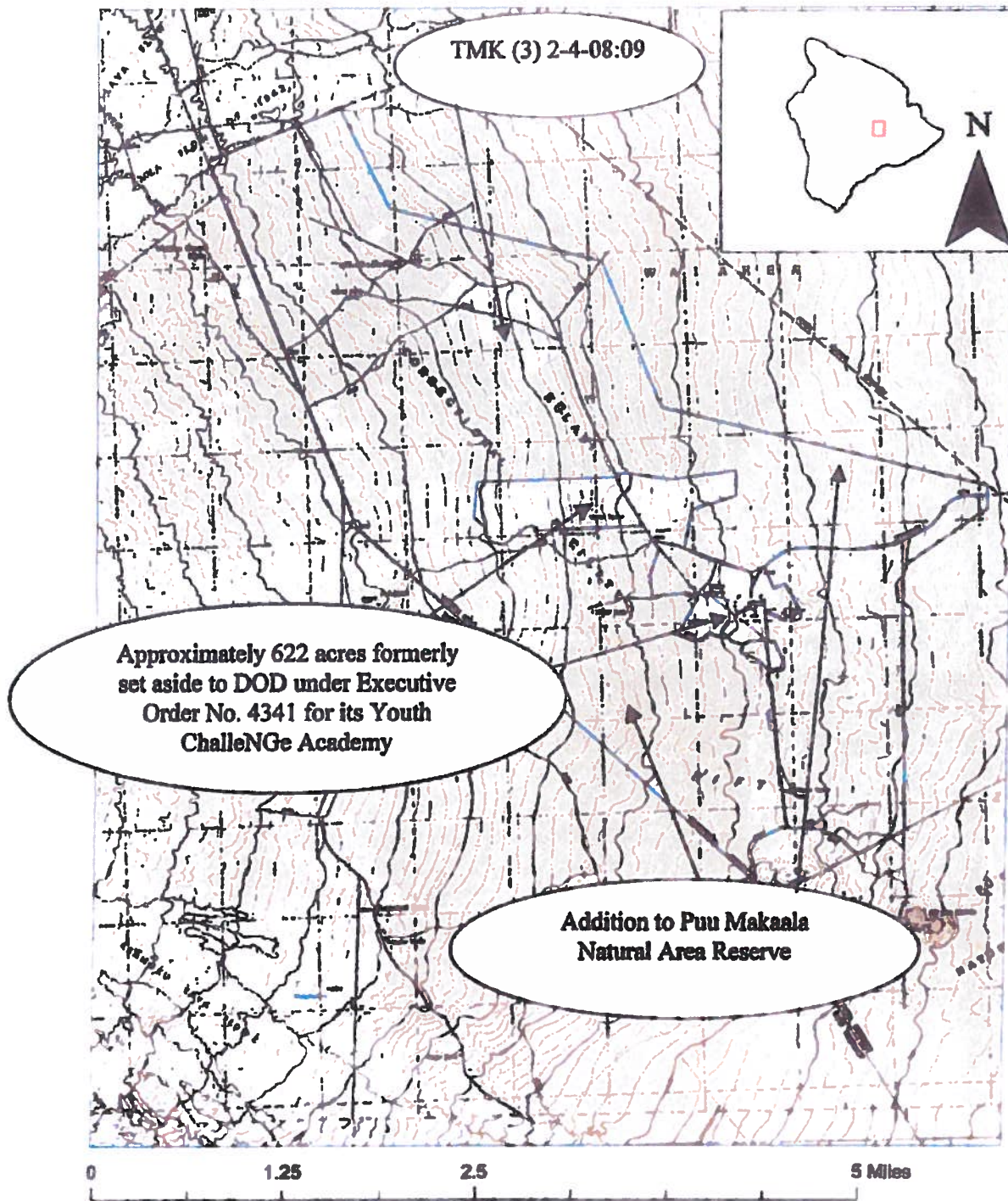
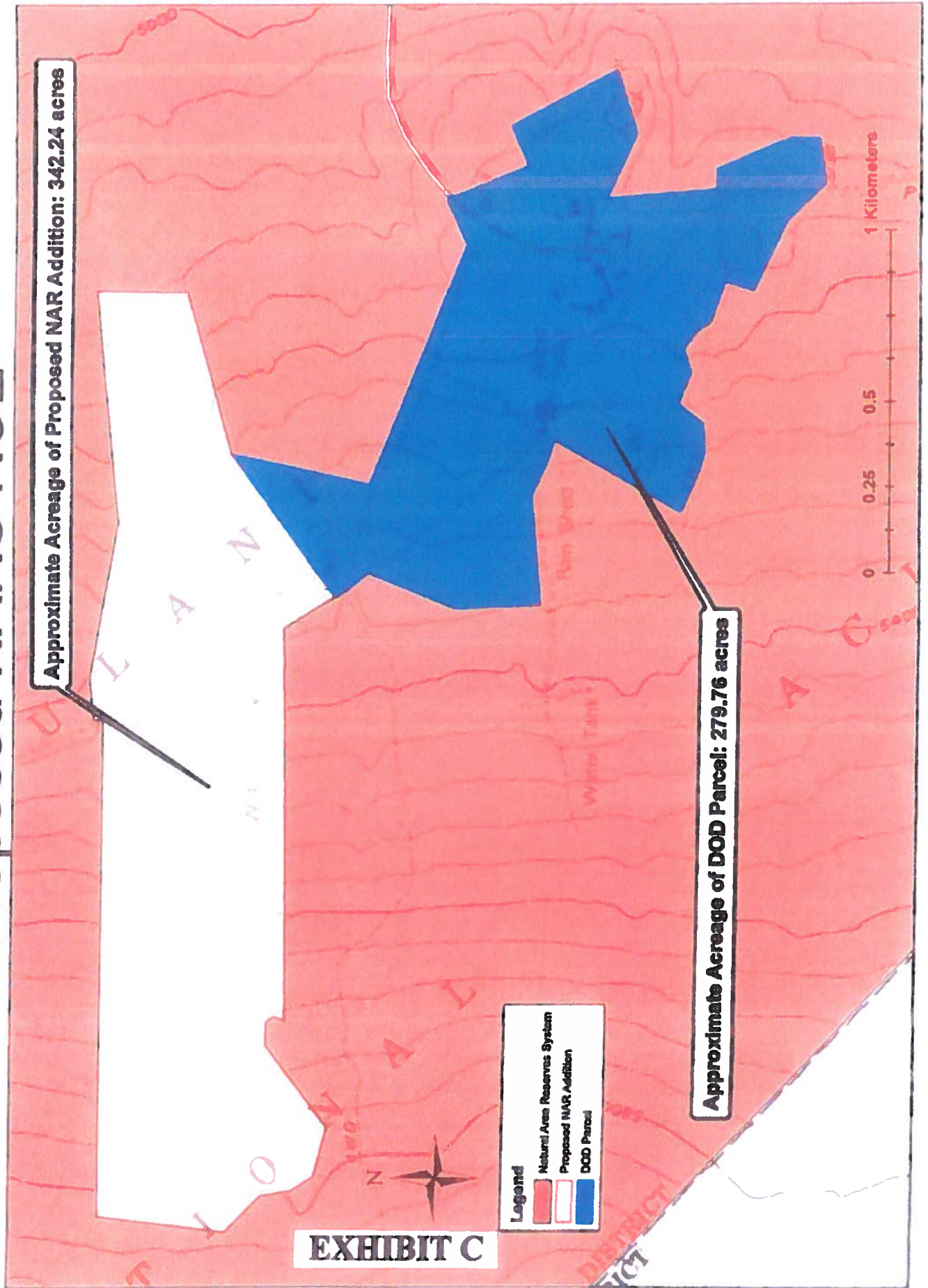


EXHIBIT B

Proposed NARS ROE



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRMAN
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER OF WATER RESOURCES
MANAGING DIRECTOR

CUY R. KAUUKUKU
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR WATER

AQUATIC RESOURCES
HUNTING AND OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION FOR WATER RESOURCES
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
DIVISION
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAPUNAHU ISLAND RESERVE LANDS
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

- Project Title:** Cancellation of Governor's Executive Order No. 4341 and Issuance of Revocable Permit for Approximately 279.76 Acres to State of Hawaii, Department of Defense (DOD), for Youth ChalleNGe Academy Purposes, with Access, Utility and Conservation Easements Reserved to the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW); Issuance of Immediate Management Right-of-Entry to DOD; Issuance of Right-of-Entry to DOFAW over Access, Utility and Conservation Easement Area, and over Approximately 342.24 Acres for Data collection, Surveys and Conservation Activities
- Project Number:** PSF No. 11HD-113
- Project Location:** Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-08:09
- Project Description:** Cancel existing executive order and issue revocable permit over portion of land to DOD for Youth ChalleNGe Academy, while reserving an easement for access, utility and conservation purposes to DOFAW. Issue right-of-entry to DOFAW over remaining area of former DOD set-aside lands for data collection, survey and conservation purposes.
- Consulted Parties:** Office of Conservation and Coastal Lands; County of Hawaii Planning Department; and others
- Exemption Class No.:** In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR § 11-200-8(a)(1)]."

EXHIBIT D

**Exemption Item No.
And Description:**

Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

This exemption is appropriate because DOD, through a revocable permit, will continue to manage a portion of the area previously set aside to it under Executive Order No. 4341 for operation of its Youth Challenge Academy (YCA), which includes the maintenance responsibilities as described in the exemption. The reservation of an access, utility and conservation easement in favor of DOFAW within the revocable permit area does not result in an expansion in use of the area. Similarly, a right-of-entry issued to DOFAW over approximately 342.24 acres outside of the revocable permit area for data collection, survey and conservation purposes is not an expansion of the use of that area.

While this action is part of a multi-phase project, the approval of the set-aside in itself will result in no material change or significant cumulative impact. If further actions are taken that result in a material change, DOD and/or DOFAW, as applicable, will be required to be in compliance with Chapter 343.

Recommendation:

The cancellation of Executive Order No. 4341 and the issuance of a revocable permit to DOD over a portion the lands in itself will probably have minimal or no significant effect on the environment. Additionally, the issuance of a right-of-entry to DOFAW over portions of the land for data collection, survey and conservation purposes will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the action is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to any future use of the lands, DOD and/or DOFAW, as applicable, shall be responsible for compliance with Chapter 343, HRS, as amended.



William J. Aila, Jr., Chairperson


10/13/11

Date

SENATE CONCURRENT RESOLUTION

DISAPPROVING THE RESET ASIDE OF THE FORMER KULANI CORRECTIONAL FACILITY LANDS FROM THE DEPARTMENT OF PUBLIC SAFETY TO THE DEPARTMENT OF DEFENSE FOR THE YOUTH CHALLENGE ACADEMY, REQUESTING THE DEPARTMENT OF DEFENSE TO LOOK TO OTHER PLACES ON THE BIG ISLAND TO RELOCATE THE YOUTH CHALLENGE ACADEMY, AND URGING THE DEPARTMENT OF PUBLIC SAFETY TO REOPEN KULANI CORRECTIONAL FACILITY AT THE PRESENT SITE OF THE YOUTH CHALLENGE ACADEMY AND REHIRE THE SAME STAFF.

1 WHEREAS, on September 9, 2010, the Board of Land and
2 Natural Resources voted to approve the reset aside of 614.14
3 acres of former Kulani Correctional Facility lands from the
4 Department of Public Safety to the Department of Defense for a
5 Youth Challenge Academy, and related easements; and
6

7 WHEREAS, this action led to the cancellations of Governor's
8 Executive Order Nos. 1225 (527.86 acres) and 1588 (86.28 acres)
9 for a total of 614.14 acres and reset asides of the lands
10 identified in those Executive Orders under Governor's Executive
11 Order No. 4341; and
12

13 WHEREAS, pursuant to section 171-11, Hawaii Revised
14 Statutes, the Governor may, with the prior approval of the Board
15 of Land and Natural Resources, set aside public lands to any
16 department or agency of the State or its political subdivisions
17 for a public use or purpose; and
18

19 WHEREAS, the power granted to the Governor to set aside,
20 withdraw, or withdraw and set aside public lands shall be
21 exercised subject to disapproval by the Legislature by
22 two-thirds vote of either the Senate or the House of
23 Representatives or by the majority vote of both, in any regular
24 or special session next following the date of the setting aside
25 or withdrawal, or both; and
26



1 WHEREAS, the closure of Kulani Correctional Facility in the
2 fall of 2009 had a widespread impact on the Island of Hawaii, as
3 well as the correctional system statewide; and
4

5 WHEREAS, in response to the announced closure, the State
6 Senate initiated a review and assessment of the impact to the
7 community from the planned closure of the Kulani Correctional
8 Facility; and
9

10 WHEREAS, as part of that review, a Senate Ad Hoc Committee
11 conducted three informational briefings: on August 13, 2009, in
12 Hilo, Hawaii; on August 14, 2009, in Kailua-Kona, Hawaii; and on
13 August 19, 2009, in Honolulu, Hawaii; and
14

15 WHEREAS, prior to the Honolulu informational briefing,
16 three subpoenas commanding appearance and testimony before the
17 Committee were served: one to the Chairperson of the
18 Correctional Industries Advisory Committee, and two to the
19 administrators at Kulani Correctional Facility; and
20

21 WHEREAS, written comments were received from the Department
22 of Public Safety, the Mayor of the County of Hawaii, Community
23 Alliance on Prisons, and six individuals, and approximately two
24 dozen people presented oral testimony; and
25

26 WHEREAS, unfortunately, the closure of Kulani Correctional
27 Facility was completed in October 2009, and as anticipated, that
28 closure has had a detrimental economic and environmental impact
29 on the Island of Hawaii; and
30

31 WHEREAS, from its 1946 opening as a work camp through the
32 2009 closure, Kulani Correctional Facility incorporated
33 vocational training and specialized programming for the inmates;
34 and
35

36 WHEREAS, the inmates used these skills to contribute
37 substantially to the needs of the Big Island, providing
38 mechanical repair and maintenance, construction, heavy equipment
39 operation, computer work, as well as horticulture and
40 conservation assistance through community service projects, and
41 many communities relied heavily on the inmates from Kulani
42 Correctional Facility for work they would not have been able to
43 complete by themselves; and
44

1 WHEREAS, Kulani Correctional Facility has received
2 significant state investments through capital improvement
3 projects - \$8,136,937 since 2000 - and it would be a serious
4 dereliction of the State's fiscal obligations to let these
5 facilities sit idle; and

6
7 WHEREAS, the Department of Defense has proposed to use
8 these facilities for an expansion of the Hawaii National Guard
9 Youth Challenge Academy, which would allow the Youth Challenge
10 Academy program to double the current annual number of graduates
11 from approximately 200 to 400; and

12
13 WHEREAS, the Youth Challenge Academy, which is currently
14 housed at Kalaeloa, Oahu, has been in operation since 1994, and
15 works with 16- to 18-year-old at-risk youth who did not complete
16 high school, providing vocational training and General
17 Educational Development completion; and

18
19 WHEREAS, while the Youth Challenge Academy would provide
20 benefits to the residents of the Island of Hawaii and the State,
21 the speed of the transfer of 614.14 acres gives the community
22 very little time to assess and react to these proposed actions
23 and renders it more difficult for the new state administration
24 to respond to those concerns with constructive actions; and

25
26 WHEREAS, at the September 9, 2010, Board of Land and
27 Natural Resources hearing, the reset aside of lands to the Youth
28 Challenge Academy generated considerable discussion, and a
29 number of issues were raised, including funding, land tenure,
30 and the size of the facility needed for the Youth Challenge
31 Academy; and

32
33 WHEREAS, until these issues are resolved, the reset aside
34 of approximately 600 acres of the land for the Hawaii National
35 Guard Youth Challenge Academy may not be the best possible use
36 of this unique state resource; now, therefore,

37
38 BE IT RESOLVED by the Senate of the Twenty-sixth
39 Legislature of the State of Hawaii, Regular Session of 2011, the
40 House of Representatives concurring, that the Legislature
41 disapprove the reset aside of 614.14 acres of former Kulani
42 Correctional Facility lands from the Department of Public Safety
43 to the Department of Defense for a Youth Challenge Academy, and
44 related easements; and

1
2 BE IT FURTHER RESOLVED that the Department of Defense
3 initiate a further review and assessment of the environmental
4 and fiscal implications and benefits of the resetting aside of
5 the 614.14 acres under the cancellations of Governor's Executive
6 Order Nos. 1225 (527.86 acres) and 1588 (86.28 acres); and
7

8 BE IT FURTHER RESOLVED that the Department of Defense is
9 requested to look to other places on the Big Island to relocate
10 the Youth Challenge Academy; and
11

12 BE IT FURTHER RESOLVED that the Department of Public Safety
13 is urged to reopen Kulani Correctional Facility at the present
14 site of the Youth Challenge Academy as referenced above, and
15 re-hire the same staff that worked at the Facility before the
16 transfer to the Department of Defense; and
17

18 BE IT FURTHER RESOLVED that the Department of Defense
19 report its findings and recommendations to the Legislature no
20 later than twenty days prior to the convening of the Regular
21 Session of 2012; and
22

23 BE IT FURTHER RESOLVED that certified copies of this
24 Concurrent Resolution be transmitted to the Governor,
25 Chairperson of the Board of Land and Natural Resources, Director
26 of Public Safety, and Adjutant General.

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

JODIE F. MAESAKA-HIRATA
DIRECTOR

MARTHA TORNEY
Deputy Director
Administration

JOE W. BOOKER, JR.
Deputy Director
Corrections

KEITH KAMITA
Deputy Director
Law Enforcement

No. 2011-1630

September 26, 2011

TO: Mr. Kevin E. Moore, District Land Agent
Department of Land & Natural Resources (DLNR), Land
Division

FROM: Jodie F. Maesaka-Hirata, Director *Jodie Maesaka-Hirata*
Department of Public Safety

SUBJECT: DLNR Memorandum Reference No. 11HD-113

The Department of Public Safety respectfully requests that the proposed set aside of parcels of the land situated at Walakea, South Hilo, Hawaii, identified by Tax Map Key (3) 2-4-08:09 por., be redesignated to the Department of Public Safety for the reestablishment of the Kulani Correctional Facility (KCF).

In accordance with Governor Neil Abercrombie's *A New Day in Hawaii* plan to return Hawaii inmates from Mainland correctional facilities, the Department proposed the reopening of KCF as a working farm and ranch to promote food sustainability and provide inmates with work experience.

PSD will require the full 622 acres in order to adequately provide inmates the vocational programs and opportunities surrounding agriculture, farming, and ranching. In the past, KCF had agreements with the Division of Forestry and Wildlife and other conservation groups to provide inmate labor. Also, appropriate programs combined with conservation efforts, will give inmates opportunities to learn about indigenous plants and animals, and will allow the inmates to connect with their cultural heritage, beliefs, and practices.

PSD has been in discussion with the Department of Defense (DOD) concerning the relocation of the Hawaii National Guard Youth Challenge Academy, and has recently been informed that DOD is considering moving its operations to the Kilauea Military Reservation in Spring 2014. Given these new developments, it may not be prudent to assign the property to DOD at this time.

Thank you for the opportunity to provide comments related to your memorandum. Please do not hesitate to call me at 808-587-1350 if you have any questions.

EXHIBIT F

NEIL A. ARNCORST
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**

75 Aupuni Street, Room 204
Hilo, Hawaii 96720
PHONE: (808) 974-6203
FAX: (808) 974-6222

October 4, 2011

To: Central
FROM: HDLO
No: 11HD-113
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

Ref. No.: 11HD-113

MEMORANDUM

TO: Honorable Jodie F. Massaka-Hirata, Director
Department of Public Safety

FROM: Kevin E. Moore, Hawaii District Land Agent *WEM*
Land Division, Department of Land and Natural Resources

SUBJECT: Cancellation of Governor's Executive Order No. 4341 and Issuance of Revocable Permit for Approximately 279.76 Acres to State of Hawaii, Department of Defense (DOD), for Youth Challenge Academy Purposes, with Access, Utility and Conservation Easements Reserved to the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW); Issuance of Immediate Management Right-of-Entry to DOD; Issuance of Right-of-Entry to DOFAW over Access, Utility and Conservation Easement Area, and over Approximately 342.24 Acres for Data Collection, Surveys and Conservation Activities, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-08:09 pors.

Thank you for your memorandum of September 26, 2011 in which the Department of Public Safety (PSD) requests that the 622 acres of above-referenced lands of the former Kulani Correctional Facility (KCF) be redesignated for PSD's use.

We would like to clarify that the proposed disposition to the State of Hawaii Department of Defense (DOD) is a revocable permit, which is a temporary disposition intended to allow DOD to use and manage 279.76 acres of the improved area of the former KCF until a permanent disposition of the property can be made. Your memorandum mentions that PSD has been in communication with DOD regarding the possible relocation of its Youth Challenge Academy (YCA) to the Kilauea Military Reservation. PSD is welcome to submit a request for an executive order for the set-aside of the improved KCF campus once a plan is in place for the relocation of the YCA, and PSD has a timetable for reopening a correctional facility on the land.

After consultation with our Chairperson's office, we have decided to proceed with the staff recommendation to issue a right-of-entry permit to DLNR's Division of Forestry and Wildlife (DOFAW) over approximately 342.24 acres of the former KCF lands. Ultimately, DOFAW intends to seek the approval of the Board for an executive order adding the land to the Puu

Honorable Jodie F. Maesaka-Hirata, Director
Department of Public Safety
October 4, 2011
Page 2

Makaala Natural Area Reserve. The pastures in this area have not been used since 2005 and are now recovering in native forest and are known habitat for endangered plants and animals. This area is also a priority for the future release of the *alala* (Hawaiian crow). Finally, we note that PSD continues to hold Executive Order No. 1426 for approximately 492.5 acres at the 800-foot elevation of Mauna Loa. This land was set aside to PSD as an addition to KCF and was formerly used for pasture. We understand it could be put to productive use in conjunction with a reopened correctional facility at the 279.76-acre main campus site.

We anticipate this matter being taken up at the October 28, 2011 Land Board meeting, and will send you a written notice of the meeting when the matter is confirmed on the agenda. In the meantime, please contact me at (808) 974-6203 if you have any questions.

C: Central Files
William J. Aila, Jr., Chairperson
Land Board Member
Russell Y. Tsuji, Administrator, Land Division
Paul Conry, Administrator, DOFAW
Col. Neal Mitsuyoshi, Department of Defense
Rick Campbell, Youth Challenge Academy

86748

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

REVOCABLE PERMIT NO. S-7811

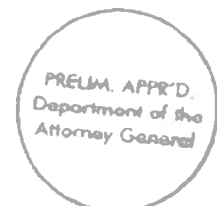
KNOW ALL MEN BY THESE PRESENTS:

This Agreement (hereinafter referred to as the "Permit") is executed this 6th day of December, 2012, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and the State of Hawaii, DEPARTMENT OF DEFENSE, hereinafter called the "Permittee," whose mailing address is 3949 Diamond Head Road, Honolulu, Hawaii 96817. The parties agree that commencing on the 28th day of October, 2011, ("commencement date"), Permittee is permitted to enter and occupy, on a month-to-month basis only, pursuant to section 171-55, Hawaii Revised Statutes, that certain parcel of public land (and any improvements located thereupon) situate at Waiakea, South Hilo, Island of Hawaii, Hawaii, tax map key no. (3) 2-4-08:09 por., as indicated in blue shading on the map attached hereto and made a part hereof, containing an approximate area of 279.76 acres, which parcel is hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Occupy and use the Premises for the following specified purposes only: Hawaii National Guard Youth Challenge Academy. Military uses, training or otherwise, are explicitly prohibited on the Premises.
2. Reserved.
3. Reserved.
4. Reserved.
5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.
6. Reserved.



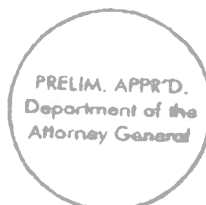
7. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit applicable to the Premises, including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities.
8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.
11. Pay all charges, assessments, or payments for water, other utilities, and the collection of garbage as may be levied, charged, or be payable with respect to the Premises.
12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.
13. At all times with respect to the Premises, use due care for public safety.
14. Permittee shall ensure that its consultants, contractors and/or persons acting for or on its behalf shall procure, at their own cost and expense, comprehensive general liability insurance, or its equivalent, and maintain in full force and effect during the entire period of this Permit, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, a policy or policies of comprehensive general liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources (Department). The insurance shall cover the entire Premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of Permittee and its consultants, contractors and/or persons acting for or on its behalf.



Prior to entry and use of the Premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, Permittee shall ensure that its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire Permit term and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Department. The State may at any time require the Permittee to provide the State with copies of the insurance policy(s) that are or were in effect during the permit period. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the Department, the insurance provisions in this Permit do not provide adequate protection for the Department, the Department may require Permittee's consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Department shall notify Permittee in writing of changes in the insurance requirements and Permittee's consultants, contractors and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within thirty (30) days after receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit the liability of Permittee's consultants, contractors and/or persons acting for or on its behalf under this Permit nor to release or relieve the Permittee's consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee's consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect connected with this Permit or Permittee's consultants, contractors and/or persons acting for or on its behalf. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance policy provided by Permittee's consultants, contractors and/or persons acting for or on its behalf.

The insurance certificate(s) shall be mailed to:

State of Hawaii
Department of Land and Natural Resources
Land Division
Box 621
Honolulu, Hawaii 96809



15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.
16. The Permittee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.

B. Additional Conditions:

1. This Permit is issued and effective on a month-to-month basis on a gratis basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Premises or continues to occupy or use the Premises.
2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.
3. Reserved.
4. If the Permittee fails to vacate the Premises upon revocation or termination of the Permit, the Board, by its agents, or representatives, may enter upon the Premises, without notice, and at Permittee's cost and expense remove and dispose of all vehicles, equipment, materials, or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.
5. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, the Permittee shall deposit with the Board any additional monies required to maintain an amount equal to two

times the new monthly rental as security for the faithful performance of all of these terms and conditions.

6. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
7. The Board reserves the right for its agents or representatives to enter or cross any portion of the Premises at any time.
8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
9. Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
10. The approval of gratis rent or the acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Any and all disputes or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
13. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such

materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Permittee.

For the purpose of this Permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Prior to termination or revocation of the subject Permit, Permittee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee.
15. Permittee shall ensure its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the Board and the Department harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of Permittee, its consultants, contractors and/or persons acting for or on its behalf relating to the use, occupancy, maintenance, or enjoyment of the Premises by Permittee, its consultants, contractors and/or persons acting for or on its behalf; (2) any failure on the part of Permittee, its consultants, contractors and/or persons acting for or on its behalf to maintain the Premises and areas adjacent thereto in the use and

control of Permittee, its consultants, contractors and/or persons acting for or on its behalf, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of Permittee, its consultants, contractors and/or persons acting for or on its behalf to maintain the Premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of any non-observance or non-performance of any of the terms, covenants, and conditions of this Permit or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments by Permittee, its consultants, contractors and/or persons acting for or on its behalf.


The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.

16. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.
17. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above. Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.
18. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.
19. In issuing this Permit, the Board reserves to the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW): (i) access and utility easements over, across and under the internal roads of the Premises, and (ii) conservation easements over the open and accessible areas of the Premises for data collection, survey and conservation

purposes. Pursuant to the Board's action of October 28, 2011, Item D-15, Permittee and DOFAW are required to reach an agreement between themselves regarding access by DOFAW over the internal roads of the Premises, conservation management over open and accessible areas within the Premises, the parties' maintenance obligations for the internal roads, conditions under which public access will be granted, etc. The form of the agreement is to be presented to the Board within three months of October 28, 2011.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

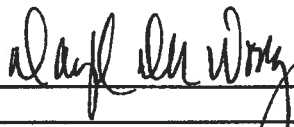
By 
WILLIAM J. AILA, JR.
Chairperson of the Board of Land and Natural Resources

Approved by the Board of
Land and Natural Resources
at its meeting held on 10/28/2011.

STATE

DEPARTMENT OF DEFENSE

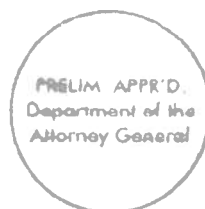
APPROVED AS TO FORM:

By 
Its _____


COLIN J. LAU
Deputy Attorney General

Dated: 8/15/12

PERMITTEE



STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 17th day of September, 2012, before me personally appeared Darryll D. M. Wong and _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Victoria Tom
Notary Public, State of Hawaii

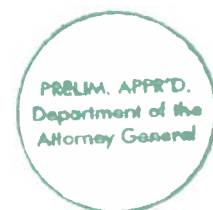
Victoria Tom

My commission expires: September 2, 2016

Doc. Date: undated # Pages: 10
Victoria Tom First Circuit
Doc. Description Revocable Permit No
S-7B11 to SCH DOD for HING
YCA, Waialeale, S Hilo, HI

Victoria Tom 9-17-2012
Notary Signature Victoria Tom Date

NOTARY CERTIFICATION



Proposed NARS ROE

Approximate Acreage of Proposed NAR Addition: 342.24 acres

Approximate Acreage of DOD Parcel: 279.76 acres

0 0.25 0.5 1 Kilometers

Legend




	Natural Area Reserves System
	Proposed NAR Addition
	DOD Parcel



EXHIBIT A

PRELIM. APPR'D.
Department of the
Attorney General

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 14, 2011

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES ADMINISTRATION

GUY H. KAHUOKUKUI
FIRST DEPUTY

WILLIAM H. TAM
DEPUTY DIRECTOR, WATER

AQUATIC RESOURCES
MARINE AND OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND RECREATION LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
ISLANDS PRESERVATION
KAIHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref.: 11HD-113
LD-KM

MEMORANDUM

TO: Paul J. Conry, Administrator
Division of Forestry and Wildlife

FROM: William J. Aila, Jr., Chairperson
Board of Land and Natural Resources

SUBJECT: Issuance of Right-of-Entry to the Division of Forestry and Wildlife, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-08:09 pors.

At its meeting of October 28, 2011, Item D-15, the Board of Land and Natural Resources approved the issuance of a revocable permit over a 279.76-acre portion of Tax Map Key: (3) 2-4-08:09 (Parcel 9) at Waiakea, South Hilo, Hawaii, to the State of Hawaii, Department of Defense (DOD), for Youth ChalleNGe Academy Purposes. At the same meeting, the Board approved the issuance of a right-of-entry to the Division of Forestry and Wildlife (DOFAW) over portions of the DOD revocable permit area for access, utilities, and conservation purposes. Additionally, the Board approved the issuance of a right-of-entry to DOFAW over a 342.24-acre portion of Parcel 9 outside of the DOD revocable permit area that DOFAW intends to add to the Puu Makaala Natural Area Reserve (NAR).

Pursuant to the authority granted by the Board of Land and Natural Resources at its meeting of October 28, 2011, Item D-15, DOFAW, its consultants and/or persons acting for or on its behalf, is hereby granted a right-of-entry permit: (i) over the internal roads on the area covered by the revocable permit to be issued to DOD (shown in blue on Exhibit A attached), for access and utility purposes, as well as over the open and accessible areas under the revocable permit for data collection, survey, and conservation purposes, and (ii) over approximately 342.24 acres outside of the area covered by the DOD revocable permit area (shown in light shading on Exhibit A attached), to conduct data collection, surveys and conservation activities while DOFAW processes a formal request for inclusion of the area in the Puu Makaala NAR, subject to the following terms and conditions:

1. This right-of-entry is valid 24-hours a day, and is effective upon our receipt of a copy of this permit countersigned by a duly authorized representative of DOFAW. The right-of-

entry shall remain in effect as to the DOD revocable permit area until such time as the Board approves a further disposition of the land, and as to the 342.24-acre area outside of the DOD permit area until the executive order setting aside the land to DOFAW is issued;

2. DOFAW will need to cooperate with DOD regarding access over the roads within the DOD revocable permit area and conservation management on open and accessible lands within the DOD permit area. As set forth in the approved Board action, a written memorandum of agreement is to be negotiated between DOFAW and DOD regarding access, road maintenance, and conservation within the DOD permit area presented to the Board within three months of October 28, 2011;
3. DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall comply with all laws, statutes, ordinances, rules, and regulations of the Federal, State and County of Hawaii governments affecting the right-of-entry area;
4. DOFAW, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry, shall be responsible for all expenses, costs and /or fees associated with any work undertaken on the land;
5. DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. DOFAW and its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area or premises any such materials except to use in the ordinary course of business of DOFAW, its consultants, contractors and/or persons acting for or on its behalf, and then only after written notice is given to the State of Hawaii, Department of Land and Natural Resources of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by DOFAW, its consultants, contractors and/or persons acting for or on its behalf, then DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at the Department's request concerning the best knowledge and belief DOFAW, its consultants, contractors and/or persons acting for or on its behalf regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by DOFAW, its consultants, contractors and/or persons acting for or on its behalf;
6. DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners and the public in general;

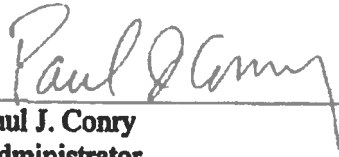
7. At all times herein, DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition;
8. All equipment shall be placed within the right-of-entry area or premises described above and shown on the attached maps;
9. All vehicles shall park in designated parking areas or safely off of the road right-of-ways and should not obstruct the flow of normal traffic in the area;
10. DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the use, maintenance, repair and operation of the right-of-entry area or premises by DOFAW, its consultants, contractors and/or persons acting for or on its behalf, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the State of Hawaii, Department of Land and Natural Resources' satisfaction the areas affected by such pollution or contamination, all at the cost and expense of DOFAW, its consultants, contractors and/or persons acting for or on its behalf;
11. DOFAW, its consultants, contractors and/or persons acting for or on its behalf shall exercise due care to prevent fires. No open burning of any type shall be permitted on the right-of-entry area and/or the surrounding State lands;
12. No alcoholic beverages will be served or permitted in the right-of-entry area or premises;
13. In the event any unanticipated sites, historic properties, burial sites as defined in section 6E-2, Hawaii Revised Statutes, or remains such as bone or charcoal deposits, rock or coral alignments, pavings or walls are encountered, DOFAW, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall stop work and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.
14. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein. This right-of-entry is revocable and terminable at any time for any reason in the sole and absolute discretion of the Chairperson;
15. The Department of Land and Natural Resources, Land Division, reserves the right to impose additional terms and conditions, if deemed necessary while this right-of-entry is in force.

Paul J. Conry, Administrator
Division of Forestry and Wildlife
November 14, 2011
Page 4

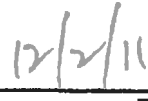
Should you concur with the foregoing terms and conditions, please have an authorized representative of DOFAW acknowledge and return a signed copy of this permit to the Hawaii District Land Office, at 75 Aupuni Street, Room 204, Hilo, Hawaii 96720. If you have any questions, please feel free to call our Hawaii District Land Office at (808) 974-6203.

WE CONCUR:

DIVISION OF FORESTRY AND WILDLIFE



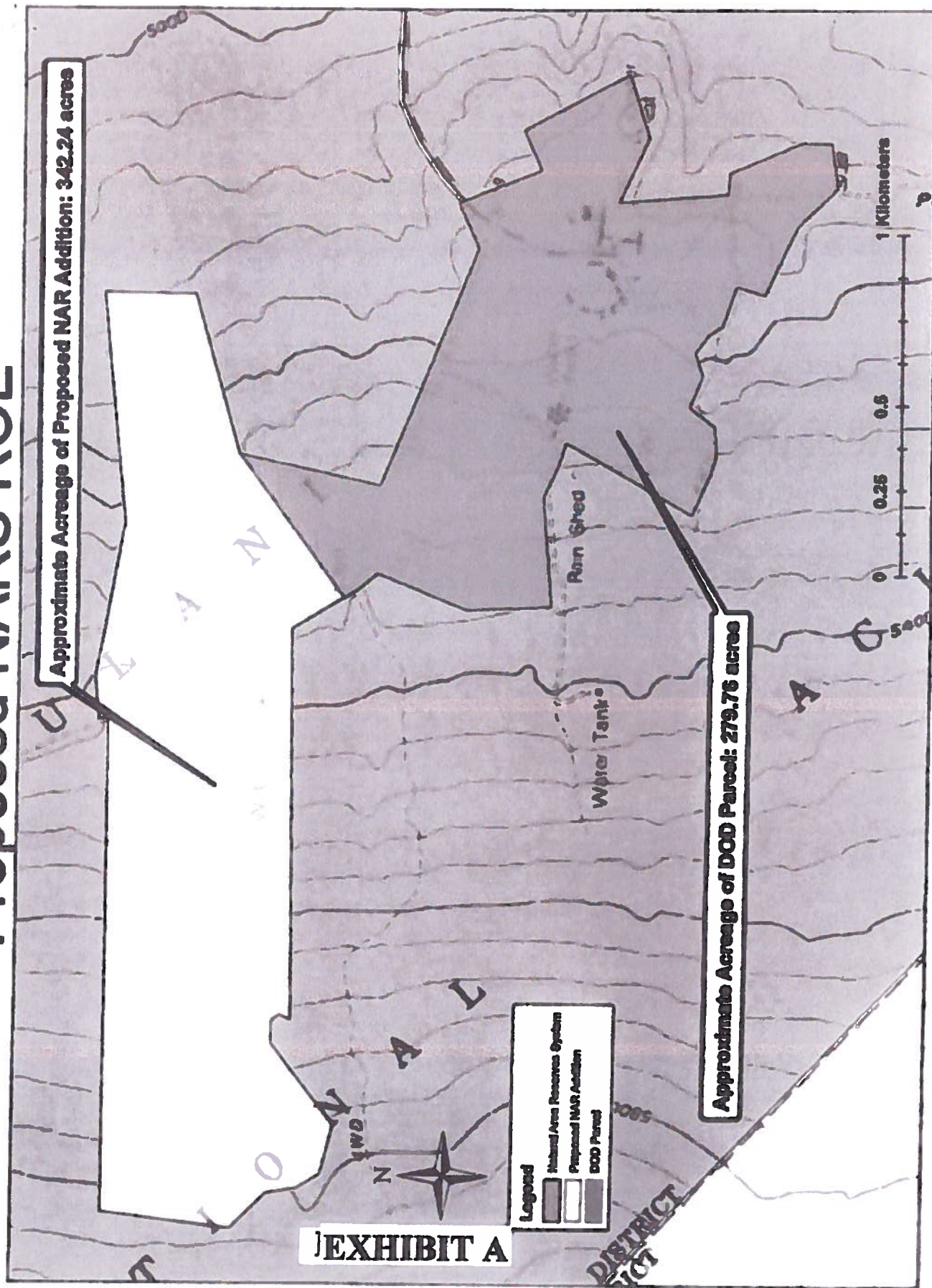
Paul J. Conry
Administrator



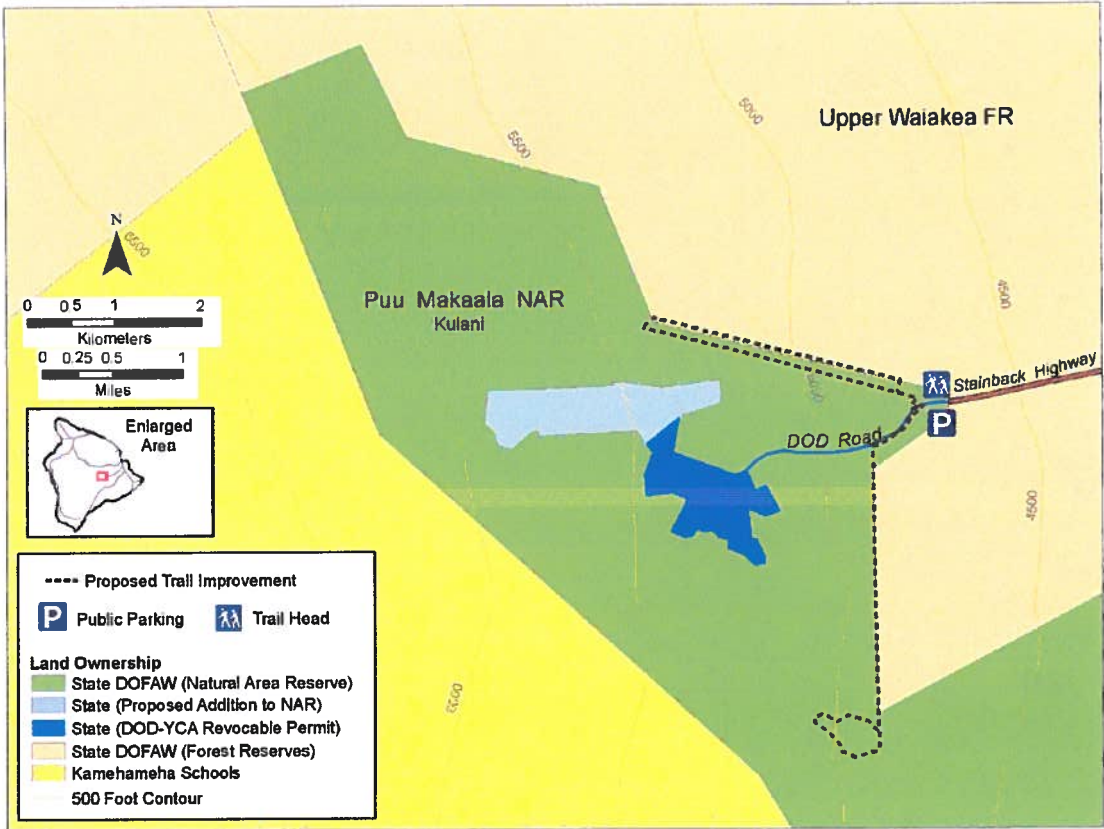
Date

C: Land Board Member
Major General Darryll Wong, Adjutant General
Jodie F. Maesaka-Hirata, Director, Department of Public Safety
DOCARE, East Hawaii

Proposed NARS ROE



Attachment 5. Kulani Access and Proposed Trail Improvement



DEPARTMENT OF LAND AND NATURAL RESOURCES
TITLE 13
SUBTITLE 9 NATURAL AREA RESERVES SYSTEM
CHAPTER 209
RULES REGULATING ACTIVITIES WITHIN NATURAL AREA RESERVES

- § 13-209-1 Purpose and applicability
- § 13-209-2 Definitions
- § 13-209-3 Permitted activities
- § 13-209-4 Prohibited activities
- § 13-209-4.5 Closing of areas
- § 13-209-4.6 Visiting hours
- § 13-209-5 Special-use permits
- § 13-209-5.5 Applications for special-use permits
- § 13-209-6 Penalty

Historical Note: Chapter 209 of Title 13, Administrative Rules, is based substantially upon Regulation 10 of the Administration of the Department of Land and Natural Resources entitled “Regulating and Prohibiting Activities within Natural Area Reserves Including Provisions for Excepted-Use Activities by Permit and Penalties for Violation of the Regulation.” [Eff 5/20/79; R 6/29/81]

§ 13-209-1 Purpose and applicability. (a) The purpose of these rules is to regulate activity within natural area reserves established pursuant to section 195-4, Hawaii Revised Statutes. (b) These rules shall apply to all persons entering the boundaries of a natural area reserve. [Eff 6/29/81] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

§ 13-209-2 Definitions. As used in these rules, unless context requires otherwise:

“Board” means the board of land and natural resources.

“Commission” means the natural area reserves system commission.

“Department” means the department of land and natural resources.

“Game mammals and birds” means those animals that have been designated as such by sections 191-8 and 191-19, Hawaii Revised Statutes, and by administrative rules of the department.

“Natural area reserve” means those State lands that have been designated as part of the Hawaii natural area reserves system by the department pursuant to section 195-4, Hawaii Revised Statutes.

“Commercial activity” means the use of or activity on state lands for which compensation is received and by any person for goods or services or both rendered to consumers or participants in that use or activity.

Commercial activities include activities whose base of operations are outside the boundaries of the natural area reserve, or provide transportation to or from the natural area reserve.

“Compensation” includes but is not limited to, monetary fees, barter, or services in-kind. [Eff 6/29/81; am 12/9/02; am 7/3/03] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

§ 13-209-3 Permitted activities. Hiking and nature study of group size of ten or less are permitted except where restricted pursuant to sections 13-209-4.5 and 13-209-4.6. Hunting is a permitted activity pursuant to hunting rules of the department. [Eff 6/29/81; am 1/26/07] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

§ 13-209-4 Prohibited activities. The following activities are prohibited within a natural area reserve:

- (1) To remove, injure, or kill any form of plant or animal life, except game mammals and birds hunted according to department rules;
- (2) To introduce any form of plant or animal life, except dogs when permitted by hunting rules of the department and service animals accompanying their handlers;
- (3) To remove, damage, or disturb any geological or paleontological features or substances;
- (4) To remove, damage, or disturb any historic or prehistoric remains;
- (5) To remove, damage, or disturb any notice, marker, or structure;
- (6) To engage in any construction or improvement;
- (7) To engage in any camping activity or to establish a temporary or permanent residence;
- (8) To start or maintain a fire;
- (9) To litter, or to deposit refuse or any other substance;
- (10) To operate any motorized or unmotorized land vehicle or air conveyance of any shape or form in any area, including roads or trails, not designated for its use;
- (11) To operate any motorized water vehicle of any shape or form in freshwater environments, including bogs, ponds, and streams, or marine waters, except as otherwise provided in the boating rules of the department;
- (12) To enter into, place any vessel or material in or on, or otherwise disturb a lake or pond;
- (13) To engage in commercial activities of any kind in a natural area reserve without a written special-use permit from the board or its authorized representative;
- (14) To have or possess the following tools, equipment, or implements: fishing gear or devices within Ahihi-Kinau natural area reserve, including but not limited to any hook-and-line, rod, reel, spear, trap, net, crowbar, or other device that may be used for the taking, injuring, or killing of marine life; cutting or harvesting tools or gear, including but not limited to chainsaws, axes, loppers, any mechanized or manual sawtooth tool, seed pickers, or machete, that may be used for the taking, injuring, or killing of plant life; and hunting gear or tools that may be used for the taking, injuring, or killing of wildlife, except as permitted by the hunting rules of the department;
- (15) To hike, conduct nature study, or conduct any activity with a group larger than ten in size;

- (16) To be present in an area closed pursuant to section 13-209-4.5 or after visiting hours established pursuant to section 13-209-4.6;
- (17) To anchor any motorized or nonmotorized water vehicle of any shape or form in the marine waters of Ahihi-Kinau natural area reserve;
- (18) To enter into any cave, as defined in section 6D-1, Hawaii Revised Statutes, or any portion thereof;
- (19) To conduct any other activity inconsistent with the purpose and intent of the natural area reserves system. [Eff 6/29/81; am 12/9/02; am 7/3/03; am 1/26/07](Auth: HRS § 195-5) (Imp: HRS § 195-5)

§ 13-209-4.5 Closing of areas. The board or its authorized representative, with the approval of the commission, may close or restrict the public use of all or any portion of a natural area reserve for up to two years, when deemed necessary by the commission for the protection of the natural, geological, or cultural resources of the area or the safety and welfare of persons or property, by the posting of appropriate signs indicating the duration, extent, and scope of closure. Closures may be renewed with the approval of the board or its authorized representative and the commission. All persons shall observe and abide by the officially posted signs designating closed areas. [Eff 1/26/07] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

§ 13-209-4.6 Visiting hours. The board or its authorized representative, with the approval of the commission, may establish a reasonable schedule of visiting hours for all or portions of a natural area reserve by the posting of appropriate signs indicating the hours during which the natural area reserve may be accessed. All persons shall observe and abide by the officially posted signs designating visiting hours. [Eff 1/26/07] (Auth: HRS § 195-5) (Imp: HRS § 195-5)

§ 13-209-5 Special-use permits. (a) The board or its authorized representative, with the approval of the commission or its authorized representative, may issue permits to conduct activities otherwise prohibited by section 13-209-4 for research, education, management, or for any other purpose consistent with chapter 195, Hawaii Revised Statutes.

(b) No permit may be valid for more than one year from date of issuance. The board may waive this restriction for permits issued to other governmental agencies where the board determines such a waiver to be in the best interest of the State.

(c) All special-use permits shall be subject to standard conditions, as approved by the board, including but not limited to the following:

- (1) The permittee shall adhere to specifications given in the permit application;
- (2) Disturbance of vegetation and wildlife shall be avoided as much as possible;
- (3) Precautions shall be taken to prevent introductions of plants or animals not naturally present in the area. The permittee is responsible for making sure that participants' clothes, equipment, and vehicles are free of seeds or dirt to lessen the chance of introducing any non-native plants or soil animals. Should an infestation develop attributable to permittee, the permittee is responsible for eradication by methods specified by the department;

- (4) This permit is not transferable;
- (5) This permit does not exempt the permittee from complying with any other applicable rule or statute;
- (6) The State of Hawaii shall be released and held harmless from any and all liability for injuries or death, or damage or loss of property however occurring during any activity related to this permit.

(d) The board or its authorized representative may attach special conditions on the special-use permit, including but not limited to reporting requirements, limitations on the size of groups or the length of time for which the permit is valid. Failure to comply with any of these conditions shall render a permit void.

(e) All permittees shall carry the permit with them at all times while in the reserve and shall, upon request, show the permit to any law enforcement officer or the board or its authorized representative.

(f) Permits are not transferable. If the permittee is a partnership, joint venture, or corporation, the sale or transfer of 25 percent or more of ownership interest or stocks by dissolution, merger, or any other means, shall be deemed a transfer for purposes of this subsection and subject to the right of the department to terminate this permit effective the date of the sale or transfer.

(g) The board or its authorized representative may revoke or cancel a permit without prior notice when an emergency is declared by the department or other proper authority or when the special-use poses an immediate threat to the health, safety, and welfare of the public or natural, geological, or cultural resources of the reserve.

(h) The board or its authorized representative may revoke or cancel any permit with thirty days written notice:

- (1) For any infraction of the terms and conditions of the permit;
- (2) Upon a finding that the special-use threatens to damage the integrity or condition of the natural, geological, or cultural resources in the reserve;
- (3) Upon a finding that the special-use poses a threat to the health, safety, or welfare of the general public or otherwise negatively impacts the general public's use and enjoyment of the reserve; or
- (4) Upon closure of a reserve pursuant to section 13-209-4.5.

(i) The provisions of this section shall not exempt the applicant from complying with any other applicable rule or statute. [Eff 6/29/81; am 1/26/07] (Auth: HRS § 195-5)(Imp: HRS § 195-5)

§ 13-209-5.5 Applications for special-use permits. (a) All applications for special-use permits shall be submitted in writing to the board or its authorized representative on the form prescribed by the department. The application shall contain the following information:

- (1) Name of applicant, and if relevant, affiliation and title;
- (2) Contact information, including name of primary contact, mailing address, phone number, and if available, email address;
- (3) The period of time for which the permit is requested, not to exceed one year unless seeking a waiver pursuant to section 13-209-5(b);
- (4) The reserve(s) involved;

- (5) A map illustrating the reserve and the location within the reserve of the proposed special-use;
 - (6) A description of the proposed special-use;
 - (7) A discussion of how the proposed special-use satisfies subsections (b)(1) through (b)(6);
 - (8) An assessment of the potential environmental impact the special-use may have on the reserve or the surrounding area;
 - (9) Signature of the applicant;
 - (10) An application fee of \$50, however, the board or its authorized representative may waive the application fee if, in their opinion, the waiver is in the public interest or benefits the State; and
 - (11) Any other information as determined by the department.
- (b) In evaluating the merits of an application for a special-use permit, the board or its authorized representative shall apply the following criteria:
- (1) The proposed special-use cannot be conducted elsewhere;
 - (2) The proposed special-use is consistent with the purpose and objectives of the natural area reserve system;
 - (3) The proposed special-use is consistent with the management plan developed for the reserve;
 - (4) The proposed special-use provides a benefit (direct or indirect) to the natural area reserve system or to the individual reserve(s) or both;
 - (5) The proposed special-use will not damage or threaten to damage the integrity or condition of the natural, geological, or cultural resources in the natural area reserve and adjacent area or region;
 - (6) The proposed special-use complies with provisions and guidelines contained in Chapter 205A, Hawaii Revised Statutes, entitled "Coastal Zone Management", where applicable; and
 - (7) The applicant shall have complied with, or be in compliance with, the conditions of any previously approved permit.
- (c) The applicant shall have the burden of demonstrating that the proposed special-use is consistent with the criteria in subsection (b).
- (d) The board or its authorized representative may hold a public hearing on an application where determined by the chairperson that the scope of the proposed special-use or the public interest requires a public hearing on the application. Notice of the hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the time and place of the hearing shall be published at least once in a newspaper in the county where the natural area reserve is located.
- (e) If within two hundred seventy days after the department's acceptance of a completed application, the board or its authorized representative shall fail to render a decision thereon, the application for a special-use permit shall be automatically approved with the standard conditions outlined in section 13-209-5(c), provided that the board may revoke this approval pursuant to section 13-209-5(g) and (h). The two-hundred-seventy-day time period provided shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute

acceptance. The two-hundred-seventy-day time period for decision may be extended for another one hundred eighty days at the request of the applicant to give the board additional time to review and make a decision on the application. [Eff 1/26/07] (Auth: HRS §§ 195-5, 91-13.5) (Imp: HRS §§ 195-5, 91-13.5)

§ 13-209-6 Any person violating any of the provisions of these rules shall be penalized as provided in section 195-8, Hawaii Revised Statutes. [Eff 6/29/81] (Auth: HRS § 195-5) (Imp: HRS § 195-8)